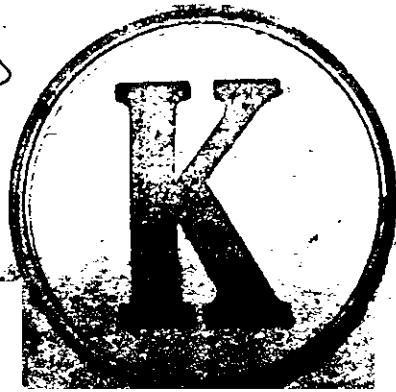


1950



File No. Prohibition II
50 (N)

Legal Dept

B BRANCH

Subject: — Notifications under the
Bombay Prohibition Act 1949

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File No. Prohibition II / 50 (N)
PT II

Gen. 194 e.

145-B

Legal Department.

A revised draft notification is sent herewith.

2. The Director of Excise and Prohibition appears to have changed the words "not exceeding $\frac{4}{7}$ of one per cent by volume". Both the expressions "of one per cent" or "one percent" do not appear to be correct. The Revenue Department should verify whether the expression "not exceeding $\frac{4}{7}$ percent by volume (equivalent to one percent of proof spirit)" is correct and carries out the intention.

3. In the Revenue Department draft at page 79 ante, it is stated in the Schedule that preparations specified in column 1 shall be exempt from rule 74 of the Bombay Foreign Liquor Rules, 1950. The said rule provides for the manner in which the sale of preparations containing alcohol in strength not more than 3.5 percent of ~~proof~~ proof spirit (equivalent to 2 percent of alcohol by volume) shall be effected. It impliedly covers also the sale of beverages containing not more than $\frac{4}{7}$ percent by volume (equivalent to 2 percent of ~~proof~~ proof spirit). The Revenue Department therefore appears to have suggested that the last mentioned preparation should be exempted from rule 74. This would, however, indirectly mean that the said preparation will be covered by the other provisions of the said rules. This is not the intention of the Revenue Department. The object in view would be achieved if it is provided generally that the said preparation shall be exempted from rules, regulations or orders relatable to the said sections.

Additional Secretary to Government.

U.R. to R.D. No. 15756 , Dated the 13th November, 1950.

R.I.No. 1881 dt. 13th Oct. 1950.

Submitted.

Attention is invited to the letter of the Dir. of Excise and Prohibition on p.1 ante. The Dir. proposes to issue a confidential circular on the lines indicated on p. 3 ante instructing Collectors and other officers not to take any executive or legal action against the holder of a permit under sect. 40 or 41 who in contravention of sect. 23(a), offers any part of his foreign liquor to another holder of such permit. The short question for consideration is whether the provisions of sect. 43 read with Sect. 40 and 41 override the provisions of sect. 23 (a) in so far as it relates to offering of liquor.

2. It is true that the opening sect. 11 of Chapter III dealing with Prohibitions ⁴enumerates various matters which, inspite of the prohibitions contained in Ch. III, shall be lawful. It does not however refer to offering liquor. But Chapter IV which provides in respect of "Control, Regulation and Exemptions" does not anywhere specially regulate the question of offering of liquor. Sect. 43 however provides that no holder of a permit granted under sect. 40 or 41 shall allow the use or consumption of any part of the stock held by him under the permit to any person who is not the holder of such permit. The expression used is "allow the use or consumption". It is therefore clear that the aspect of "offer" is conveyed by the said expression, although the sect. does not specially use the expression 'Offer'. Unless a permit holder offers liquor to another permit holder, the latter cannot use or consume liquor belonging to the former. Sect. 43 therefore exempts a person holding permit under sect. 40 or 41 ~~from~~ from the operation of sect. 23(a) in so far as it prohibits offering liquor. The prohibition contained in sect. 23(a) in respect of

of offering liquor will stand in cases of other permit holders. The point is only of academic interest at this juncture and it is not necessary to issue any instructions as proposed by the Dir. of Excise and Prohibition. The view expressed by Secy. A.D. in this respect is correct.

Legal Department.

Please see paragraph 2 of this Department U.R. No. 16481 dated the 23rd November 1950. In view of the High Court's judgment in the Prohibition case it will not be legal to put any restrictions on the possession of non-beverages for their legitimate use. Therefore, any such restrictions on the non-beverages referred to in the note of the Director of Excise and Prohibition at pages 34 and 35 will be open to objection. However, as Government has since decided to go in appeal to the Supreme Court, no action may be taken in respect of these non-beverages till the appeal is decided. In the meantime, if any permit or licence is necessary for the use and possession of the aforesaid non-beverages that licence or permit may be freely granted to the persons asking for the same.

Additional Secretary to Government.

U.R. to R.D. No. S75 Conf1. Dated the 2nd December, 1950

SSM / 25/6/56.

Legal Department.

Para. 4 of the merger agreement executed by the ruler of Lunawada provides that the ruler and certain other persons mentioned therein shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State, immediately before 15th August 1947. The memorandum of personal privileges compiled by the Union Government and circulated to the rulers does not contain exemption from the Prohibition Laws as one of the personal privileges or from the payment of fees leviable under these laws or rules made thereunder. It does not, therefore, appear that the ruler of Lunawada can claim that kind of exemption under article 362 of the Constitution. It is however open to R.D. to consider the question of remitting fees leviable for permits under section 105 of the Bombay Prohibition Act, 1949. The validity of that section was not challenged in Bulsara's case in the High Court but as the judgment in the case is now under appeal in the Supreme Court, it would not be proper to make any concession which will savour of discrimination.

Additional Secretary to Government.

U.R. to R.D. No. 17031 , Dated 1st Dec. 1950.

Legal Department.

In place of draft notification at page 89 ante a revised draft notification is sent herewith.

2. For the expression "4/7 percent" the expression "40% of one percent" has been used in the revised draft.

3. As regards the proposal of Excise and Prohibition to retain the reference to rule 71 of the Bombay Foreign Liquor Rules, 1950, it appears to be intended that not only the beverage containing the percentage specified in the notification at p. 89 should be exempted from the provisions of the sections specified in the notification but that it should also be exempted from all the rules, orders, regulations, regulating its manufacture, import, export, transport, possession, sale, purchase, bottling for sale, consumption or use. This intention is now made clear.

Additional Secretary to Government.

U.B. to R.D. No. 17792, Dated the 14th Dec. 1950.

SSM / 25/6/56.

Office of the R.L.A.

Section 52 of the Bombay Prohibition Act, 1949, was no doubt held ultra vires in the recent Prohibition judgment, and, therefore, it follows that the system of granting licences to military canteens under that section can no longer be continued. Although, therefore, it may have become necessary to introduce the system of vendor's licence in the place of the canteen tenant licence, there was no legal compellability to demand the same fees for such vendor's licences as are levied in respect of the regular vendors' licences. Recourse could have been taken to the provisions of section 107 of the Act which were left unaffected by the High Court even when the entire Act was subjected to scrutiny. That section provides that subject to any rules or orders made by the State Government in this behalf the Commissioner may remit or refund wholly or partially excise duty and fee leviable under this Act on any intoxicant or hemp from any person or institution or exempt such person or institution from the payment of such duty or fee. The R.L.A. has recollection that this question was mooted at the conference with the Commander-in-Chief at which the Director of Prohibition was present, and it was then understood that although the canteen tenant licence system may have to be discontinued, no fresh onerous burden need be cast upon the licencees or the military personnel in view of the provisions of section 107. As the section stands, remission and exemption are both permissible. The power to exempt a person from the payment of duty or fee stands altogether on a different footing from the provision of exempting persons from the payment of duty or fee stands altogether on a different operation of a Statute. The latter was held ultra vires on the ground that it meant delegation of legislative power. The former is not open to that

to that objection, as what is permitted thereby is merely an executive action of remission or exemption for ~~the~~ revenue purposes. It is, therefore, extremely unlikely that section 107 would be pronounced invalid. In any case, in view of the previous history of this subject, it was not expedient for the Administrative Department to issue directives affecting military canteens on the mere speculation of section 107 being declared void in the future. That was a matter of law on which the R.L.A. should have been consulted beforehand, and had that been done, the unnecessary conflict with the military authorities which has now resulted could have been avoided.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 764 - Confl., Dated 14th Oct., 1950.

SSM / 25/6/56.

Legal Department.

Revised draft notifications are sent herewith.

2. Condition (1) of the Revenue Department draft at page 17 has been embodied in the preamble of the notification. Condition (ii) is wide enough to include condition (iii). The latter condition need not be separately mentioned nor is there any power in section 109(b) to impose such a condition.

Under section 105 of the Act an excise duty is leviable on an alcoholic liquor when imported, exported or transported. The same words have been used in the draft notification under section 107.

Additional Secretary to Government.

U.R. to R.D. No. 18448 , Dated the 30th Dec. 1950 .

O R D E R.
 Revenue Department.
 Bombay Castle, 195 .

Bombay Prohibition
Act, 1949.

No. .- In exercise of the powers conferred by clause (b) of section 139 of the Bombay Prohibition Act, 1949 (Bom.XXV of 1949), the Government of Bombay is pleased to direct that foreign liquor (not being Indian-made foreign liquor) may, without a licence, permit, pass or authorisation, be imported, exported transported, possessed, sold, purchased, consumed or use, by foreign delegates to the International Engineering Conferences and their Train Steward while passing through the State of Bombay by a Special Train during the period from 25th to 27th January 1951 subject to the following conditions, namely:-

Conditions.

- (i) The foreign liquor shall not be sold, purchased, possessed, used or ~~consumed~~ consumed except in the Special Train;
- (ii) The foreign liquor shall not be sold to, or purchased, possessed, used or consumed by, any person ~~other~~ other than foreign delegates to the International Engineering Conferences and their Train Stewards.

By order of the Governor of Bombay.,

Secretary to Government.

ORDER .

No. .- In exercise of the powers conferred
 the Bombay
 by section 107 of the ~~the~~ Excise and Prohibition Act,
 1949 (Bom. XXV of 1949), the Director of Excise and
 Prohibition ^{hereby} remits wholly the fees leviable on any
² ~~pot~~ ble foreign liquor (not being Indian-made foreign
¹ liquor) imported into, exported from, or transported
 within, the State of Bombay by delegates to the
 International Engineering Conferences and their
 Train steward while passing through the State of
 Bombay by a special train during the period from 25th
 to 27th January 1951.

Dated Director of Excise and Prohibition.

SSM / 25/6/56.

SSM
20/7

dis.
20/7